**IN THE HIGH COU RT OF PUNJAB AND HARYANA AT CHANDIGARH.**

I.T.R. No.15 of 1994
Date of decision: 29.11.2006

Commissioner of Income Tax (Central), Ludhiana.

---Applicant

Vs.

Punjab Concast Steels Ltd., Ludhiana.

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL**
**HON'BLE MR JUSTICE RAJESH BINDAL**

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

Mr. Sanjay Bansal, Advocate
for the assessee.

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**ORDER**:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 03.06.1993 in I.T.A. No.1251/Chandi/88 in respect of assessment year 1985-86:-

"1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in showing the payment of Rs.62,603/- as bonus to the employees drawing salary of Rs. 1,600/- p.m. and above treating it as ex gratia payment for business purposes?

2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing payment of Rs.12,000/- in addition to Rs.36,000/- to Mrs. Vinita Jain on account of rent for the residential house and office of the Managing Director u/s 40A(2) of the Income-tax Act?"

The assessee claimed deduction of Rs.62,603/- on account of the said amount having been paid as bonus to its employees drawing salary of

Rs.1,600/- per month and above. The claim was disallowed by the Assessing Officer on the ground that the employees not being eligible under the Payment of Bonus Act, 1965 (for short, "the Bonus Act"), deduction could not be allowed under the provisions of Section 36 (1)(ii) of the Income-tax Act, 1961 (for short, "the Act").

On appeal, the claim of the assessee was accepted and additions on this account were deleted, which order was affirmed by the Tribunal.

Secondly, the assessee made a claim for deduction towards rent paid to Smt. Vanita Jain wife of the Managing Director. The Assessing Officer disallowed a part of the payment being Rs.12,000/- out of total rent of Rs.48,000/-. The disallowance was, however, deleted by the first appellate authority, which order was upheld by the Tribunal.

We have heard learned counsel for the parties and perused the record.

We proceed to deal with the questions referred as under:-

**Re: Question No.1:-**

Learned counsel for the revenue submitted that the payments in question were not being payable under the provisions of the Bonus Act and are, thus, not allowable in view of proviso to Section 36(1) (ii) of the Act.

Learned counsel for the assessee submitted that the employees drawing more than Rs.1600/- per month, were not covered by the definition of 'employee' under the provisions of the Bonus Act and Section 36(ii) of the Act was not applicable to such a situation. The deductions are, thus, to be allowed on the principle of business expediency under Section 37 of the Act. It was submitted that though the payments were termed as 'ex-gratia payments', the payments were for business considerations to encourage efficiency of the employees.

Reliance has been placed on the judgments of Delhi High Court in ***Commissioner of Income-Tax v. Autopins (India)*** (1991) 192 ITR 161, Madras High Court in ***Commissioner of Income-Tax v. Bhavani Mills Ltd.*** (1999) 237

ITR 855 and Orissa High Court in ***Commissioner of Income-Tax*** **v.** ***Orissa Industries Ltd.*** (1993) 203 ITR 449, supporting the submissions made.

We find from the findings recorded by the CIT(A) and the Tribunal that the assessee had been making such payments consistently in the earlier years also, which were allowed as permissible deductions. We are also in agreement with the view taken in the judgments relied upon that Section 36(1)(ii) is not applicable to payments to which the Bonus Act does not apply and allowability of deductions in respect of such a payment is to be considered with reference to Section 37 of the Act. Once this is so, in view of the finding recorded by the CIT(A) as well as Tribunal, deduction was rightly allowed.

The question is, thus, answered against the revenue and in favour of the assessee.

**Re: Question No.2:-**

Learned counsel for the revenue submitted that rent paid for residential house could not be allowed as deduction in view of Section 40A(2) of the Act.

Learned counsel for the assessee, however, pointed out that in view preceding and succeeding years also, the said payment was held to be rent for office, and was allowed, as such. The finding recorded by the Tribunal in para 10 shows that the Tribunal followed its order for the previous year, which has not been questioned by the revenue.

In view of the finding recorded by the Tribunal, on principle of consistency, we are of the view that the question has to be answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

**( ADARSH KUMAR GOEL )**
**JUDGE**

**November 29, 2006**
ashwani

**( RAJESH BINDAL )**
**JUDGE**